IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 5 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)

Versus

RASIKLAL D AMIN - Respondent(s)

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Appearance :
MR MANISH R BHATT for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 01/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1.The following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench “B” under Section 27(1) of the Wealth Tax Act, 1957 (the Act) at the instance of Commissioner of Wealth Tax, Baroda.

> “Whether on the facts and in the circumstances of the case the Tribunal was right in coming to the conclusion that penalty should be quantified with reference to law as had existed on the relevant date on which assessment has been completed and penalty proceedings initiated?”

2.The assessment years are 1969-70 and 1970-71. The returns of wealth for the two years were filed on 30/12/1970 and 4/3/1971 respectively. As there was delay of 17 months and 7 months for the two years respectively in filing the

returns of wealth, the assessing officer called upon the assessee to show cause why penalty should not be levied for default under Section 18(1)(a) of the Act. The explanation of the assessee was not accepted and penalties of Rs.74,216/- for assessment year 1969-70 and Rs.27,757/- for assessment year 1970-71 were imposed.

3. The assessee went in appeal before the Appellate Assistant Commissioner of Wealth Tax. For assessment year 1969-70, the appellate authority held that the assessee had a reasonable cause upto end of April 1970 and for the remaining delay of seven completed months, the assessee had no reasonable cause and he accordingly partially allowed the appeal. He also recorded a finding that the quantification of penalty had to be based on the provisions of section 18 of the Act effective from 1st April 1976. Insofar as the assessment year 1970-71 is concerned, he did not accept the explanation

tendered by the assessee, but granted partial relief by issuing identical direction as regards quantification of penalty as made in assessment year 1969-70.

4. The Department carried the matter in appeals before the Tribunal against partial relief granted to the assessee and the assessee preferred cross objections against the partial retention of penalties by the appellate authority.

5. The Tribunal in its impugned order dated 28/6/1993 has found that the assessee was suffering from severe illness for which he had to remain outside India very often. That the assessee had to go abroad and had to undergo major surgery between 27/3/1969 to 28/9/1969 and from 25/1/1970 to 9/4/1970. That even after the surgical operations, the assessee was not fully fit both physically and mentally and this was a sufficient cause on the basis of record before the Tribunal. The Tribunal has,

therefore, held that the ill-health of the assessee operated as a handicap and prevented the assessee from filing the returns in time. Accordingly, the Tribunal has dismissed the departmental appeals and allowed the cross objections filed by the assessee. While doing so, the Tribunal has recorded that there could be no dispute with regard to the principles laid down by the Apex Court in the case of Mayarani Punj, 157 ITR 730 as regards the basis for quantification of penalty.

6. Heard Mrs.M.M.Bhatt, the learned standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent assessee.

7. The referred question need not to be answered considering the peculiar fact situation of the present case. In fact, the Tribunal has not discussed the issue at all and deleted the penalties levied on the basis of findings of fact recorded after appreciating the evidence

on record.

8. In these circumstances, the question is left unanswered being academic in so far as the facts of the present case are concerned. The reference stands disposed of accordingly.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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